Hatfield model to determine the following prices for these elements:

Line port charge.	$1.06/month
Switching:	$0.0019/minute
Trunk port charge	$3.68/month (for eacch DS-0 equivalent)[16]

BA recommends the following interim rates, which are formed on the basis of the FCC's proxies.[17] The proposed switching rate is the midpoint of the range provided by the FCC which is $0.002-$0.004.[18] The line port rate is also the midpoint of the FCC proxy range of $1.10-$2.00.[19] BA does not propose a specific trunk port charge in their exhibit.

Local Switching	$0.003/minutee
Line port charge	$1.55 /month

Transport refers to the arrangement used to carry signals between locations. There are three arrangements under consideration: dedicated access, common transport, and tandem switched transport. Dedicated access or special access is the transport of traffic of only one carrier. This method is used by carriers who can justify the monthlly cost of a dedicated circuit. Common transport is the transmission path used by mixed traffic of multiple carriers. It is used by those who do not have sufficient volume to justify dedicateed transport. Tandem transport connects switches. These connections can be between two BA switches, BA's switches and those of other carriers, the switches of new local service entrants and the interexchange carriers.

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16 Note Mercer Direct transcript at p. 39 gives this price as $6.68.

17 Exhibit BA-32.

18 Interconnection Order, ¶ 811.

19 FCC Order on Reconsideration, ¶ 8.

MCI uses the Hatfield model results for unbundled transport as follows:[20]

Dedicated Transport: $4.78/DS-0 equivalent/month

Common Transport: $0.00063/min./leg

Tandem Switching: $0.0009/minute

BA proposes the following FCC proxy, rates:[21]

Dedicated Transmission Links:	Existing Interstate Tariff Rates
Shared Transmission between	Weighted per minute
Tandem and End Offices:	equivalent of DS-1 and DS-3 circuits
Tandem Switching:	$.0015 per minute of use
	(plus tandem transport as needed)

The NID is used to connect the local loop with the customers inside wiring. In residential situations this is typically a small box on the outside (or just inside) the residence. In commercial situations, the NID is usually located in the telecommunications room of the BA end office. The signaling network carries the signals necessary for network control. The signaling network elements include Service Control Points (SCP), Signaling Transfer Points (STP), and signaling links. The STP is the switch that transfers the signals much as a tandem switch does for customer traffic. The SCP is the database and process that enables the signaling network to perform its functions. The link is the connection between the MCI local switch and the SCP.

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20 MCI October 24 Statement of Issues

21 Exhibit BA-33.

MCI proposes that signaling and the NID be priced as follows:

Signaling links	$14.98 per link per month
STP	$0.00004 per signaling message
SCP	$0.00115 per signaling message
NID	$0.49-0.64 depending on density zone

BA's position is that signaling and database services should be priced at existing interstate tariffs, which is the FCC proxy.[22] BA will not unbundle the NID as requested by MCI. BA will only unbundle the NID as required by the FCC in paragraph 392 of the Order. BA will allow MCI to interconnect with its NID but will not allow direct access to the NID. BA's proposal essentially means that MCI must place a NID next to that of BA.

BA is required to provide to any requesting telecommunications carrier nondiscriminatory access to network elements for the provision of a telecommunications service. This access is to be offered on an unbundled basis, at any technically feasible point, with rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of section 251(c)(3) and section 252. The FCC discussed the importance of selecting the correct price for unbundled network elements.[23]

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22 Exhibit BA-34.

23 Interconnection Order, ¶ 620.

AWARD

As the Arbitrator, I believe and agree with BA's position and therefor order that only interim rates be set here (and once the Board can examine in detail the costs of providing interconnection unbundled network elements in generic proceeding it could revisit the interim rates.) This is consistent with the finding in MFS and should be set, as indicated in Exhibit BA 30.

ISSUE 9 - PRICING OF UNBUNDLED LOOPS

See Issue 8 - See Exhibits BA 30 and BA 31 - Set rate at: $12.47.

ISSUE 10 - PRICING OF UNBUNDLED SWITCHING

See Issue 3 and 8 - See Exhibit BA 32.

ISSUE 11 - PRICING OF UNBUNDLED TRANSPORT

See Issue 8 - See Exhibit BA 33.

ISSUE 12 - UNBUNDLED SIGNALING NETWORK ELEMENTS AND NID

See Issue 8 - See Exhibit BA 34.

ISSUE 13 - WHOLESALE RATE

At issue is the determination of a wholesale rate to be charged by BA for services offered for resale by MCI and whether the rate should be interim or permanent.

MCI's position is that it tracked "closely the FCC model" in deriving its rate of 22.07%. On the other hand, BA's position is that the MCI cost studies produce a "wholesale discount considerably higher" than the "proxy" rate of the FCC and it suggests that interim rates be set at 14.54% and the rate of 11.27% be set for those who wish to take advantage of BA's directory assistance (DA) and operator services (OS) platforms.

The parties differ in their calculation methods on two levels. The first is on certain fundamental issues. BA uses its total expenses and revenues in its calculations, while MCI uses intrastate numbers only. The parties also differ on the denominator to be used in the calculation MCI uses expenses as a denominator while BA uses revenues.

The second level where the parties differ is in the amount of individual accounts that should be considered to be avoidable. The following table provides the percentage of costs considered avoidable by the parties for some of the key accounts.

Account(s)	Description	BA	MCI
6621,6622	Call Completion and Number Services	39.70%	100.00%
6611	Product Management	24.50%	90.00%
6612	Marketing/Sales	90.80%	90.00%
6613	Advertising	0.00%	90.00%
6623	Other Customer Service	69.10%	90.00%
4040	Uncollectibles	8.40%	18.40%

There are other differences at the detailed level beyond those shown in the table above. For example, MCI includes no new costs in its calculation, while BA includes over $18 million in new costs for information systems and a co-carrier facility.[24]

The following table provides a direct comparison of the dollar amounts used by the two parties in calculating the wholesale rate. BA's calculations shown are for a CLEC using that uses its own DA/OS platform.

24 Exhibit BA-11, Exhibit A, p. 17.

Wholesale Rate Calculation Summary

	BA	MCI
Total Direct Avoidable	$225,726	$200,261
Total Regulated Costs	$2,143,797	$1,582,960
Indirect Factor	10.53%	18.34%
Total Indirect Costs	$525,381	$374,010
Avoidable Indirect Costs	$55,319	$68,593
New Costs	($18,333)	NA
Net Avoidable Costs	$262,712	$358,854
Revenues	$1,807,155	Not used
Total Expenses	Not used	$1,582,960
Wholesale rate	14.54%	22.67%

The Act gave to ILECs the duty offer services at resale. The Act also charges states with determining the wholesale rate "on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier."[25]

The FCC's Interconnection Order also discussed the importance of offering services for resale and provided guidance to the state in determining the wholesale rate.[26] In its criteria for costs studies, the FCC indicated that certain direct costs should be presumed to be avoidable.[27] The FCC provides two means of determining wholesale rates while still allowing states latitude.

25 1996 Telecommunications Act, § 252 (d) (3).

26 Interconnection Order, ¶ 32.

27 Interconnection Order, ¶ 917.

While the FCC was considering its order to implement the Act, MCI submitted an avoided cost model to the FCC. The FCC used MCI's cost model with some modifications to calculate a wholesale rate for each regional Bell operating company and GTE. The value obtained for Bell Atlantic was 19.99 percent.[28]

The FCC established a default range of wholesale rates to be used in the absence of an avoided cost study. The range was 17 percent to 25 percent.[29]

AWARD

The Arbitrator orders that the wholesale discount rate be set as indicated in FCC ¶ 9310 (19.99%). The rate of "spread" of 3.27% would be determined by subtracting the difference between the BA figure of 144.54% and 11.27%. That rate would be subtracted from 19.99% to determine a rate of 16.72% for those resellers who choose to use BA's DA and OS platforms and that they be set on an interim basis.

ISSUE 14 - SERVICES AVAILABLE FOR RESALE

At issue is the extent to which services and the associated resale rates must be available.

MCI's position is that the Arbitrator should make sure by an order that every retail telecommunication service including the specific addition service of additional directory listings, bold listings, vanity numbers and unlisted numbers be available for resale. BA's position is that this is not a telecommunication service.

At issue is the extent to which services and associated resale rates must be made available. Certain services are straightforward, and BA and MCI are in agreement on them. However, the

28 Interconnection Order, ¶¶ 9225-930.

29 Interconnection Order, ¶ 9332.

parties do not agree that additional directory listings, bold listings, vanity numbers, and unlisted numbers fall into the same category.

The availability of additional directory listings, bold numbers, vanity numbers, and unlisted numbers is important to the ability of MCI to compete in the local telephone service marketplace. Section 251 © (4) of the Act provides that incumbent local exchange carrier must:

> *offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.*

The Act gave the definition of telecommunications as "the transmission between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."[30]

AWARD

I agree with the position that BA takes and agree that telecommunications services do not include such services as directory listings, bold listings, vanity numbers and unlisted numbers (unless I have previously or subsequently specifically excepted them.) Therefore, I order that MCI's requests be denied. However, additional directory listings, bold listings, vanity numbers,

30 1996 Telecommunications Act, §153 (43).

and unlisted numbers must be made available to MCI at retail rates.

ISSUE 15 - RESTRICTIONS ON COLLOCATION

The issues to be decided in this arbitration are (1) whether MCI should be permitted to collocate remote switching modules (RSMs) in BA's premises, and (2) whether a time period should be specified for requiring BA to physically collocate MCI's equipment, and if so, what time period should be established.

MCI's position is that MCI "should be permitted to collocate equipment" at BA's premises "wherever technically feasible" and that this should be done "within a reasonable period of time." BA's position is that MCI wants to extend the Act and the FCC order by so doing and it will create "serious space problems."

Collocation is the placement of a CLEC's equipment in the ILEC's premises. The first issue arises because RSMs have the capability of providing switching functions, as well as providing interconnection. The other collocation issue is whether BA should be required to establish physical collocation within three months of a request as suggested by MCI, or within 120 days as proposed by BA. The Act gives the basic requirements for interconnection and collocation imposed on the ILECs.[31] The FCC's Order discusses limitations on collocation.[32]

MCI points to the FCC's Order at paragraph 579 as support for the position that there should be no limitation on the type of equipment to be collocated if it is used for interconnection and access to unbundled elements.

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31 1996 Telecommunications Act, §§ 251 (c) (2) and 252 (c) (6).

32 Interconnection Order, ¶ 550.

The FCC allows states to designate "specific additional types of equipment" to be used for collocation.[33] The FCC interpreted the Act as not requiring the collocation of equipment used to provide "enhanced services" and it declined to require ILECs to allow collocation without restriction. Furthermore, the FCC said:[34]

> *At this time, we do not impose a general requirement that switching equipment be collocated since it does not appear that it is used for the actual interconnection or access to unbundled network elements. We recognize, however, that modern technology has tended to blur the line between switching equipment and multiplexing equipment, which we permit to be collocated. We expect, in situations where the functionality of a particular piece of equipment is in dispute, that state commissions will determine whether the equipment at issue is actually used for interconnection or access to unbundled elements. We also reserve the right to reexamine this issue at a later date if it appears that such action would further achievement of the 1996 Act's procompetitive goals.*

BA will permit the collocation of RSMs if the switching function is disabled. BA also said that an RSM will take the same amount of space whether or not the switching function is disabled. Thus, it is apparent that BA's objection to RSMs does not relate to space requirements. It also seems apparent that MCI's motivation for collocating RSMs is to take advantage of the switching functions.

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33 Interconnection Order, ¶ 580.

34 Interconnection Order, ¶ 581.

AWARD

An Order is hereby issued to the effect that local competing carriers should have the right to collocate, but they are not to interfere with such other carriers as may have equipment and that this be done within 90 days of a formal application. MCI should be permitted to collocate RSMs at Bell facilities but not to be permitted to use the RSMs to switch traffic. (To be used for interconnection only.)

ISSUE 16 - COLLOCATION PRICING

The issue for arbitration is the determination of pricing for providing collocation space.

MCI's position is that rates should be "priced at TELRIC" using the Hatfield model. BA takes the position that the rates should be set at its "existing interstate collocation tariff rates".

MCI suggests that collocation pricing should be the same as the standard for interconnection and unbundled elements. BA proposes that interim collocation rates should be set at existing interstate collocation tariffs. BA plans to submit intrastate collocation tariffs in New Jersey that "mirror" the existing interstate tariffs. BA also points out that both MFS and ETC have agreed to the these terms.

The Act gives ILECs "the duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier."[35] The FCC provided guidance to the states for establishing rates for collocation [36]

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35 1996 Telecommunications Act at § 251 (c) (6).

36 FCC Interconnection Order at ¶ 826. This position is also recognized in the FCC Rules at 47 C.F.R. § 51. 513 (c) (6).

AWARD

An Order is issued, on an interim basis only, that rates are bassed on FCC proxy rates and defined as existing interstate tariffs. (In this case, we have not yet fullly examined BA's TELRIC costs are. At such time as they are determined, the Board can adjust its rates. If that is BA's existing tariff rate, so be it.)

ISSUE 17 - DIRECTORY ASSISTANCE DATABASE

The issue to be arbitrated is the determination of the data that BA should provide to MCI from BA's directory assistance database and the manner in which that data will be provided.

MCI's position on this is that BA should maintain and turnoveer to MCI a complete DA database, that includes all information from BA. BA's position is that it is willing to turnoveer the DA database, but not all the "goodies" it has collected on the various ppersons it has compiled. In other words, MCI is not entitled to access to unlisted names or numbeers and only to listings in a format that BA provides in its own directory.

MCI's position is supported by the FCC's Second Report and Order in paragraph 141 and 142, which requires that competing carriers have at least the same quality of access to directory assistance listings as the ILEC enjoys. However, it is difficult from the evidence provided by both parties to have a complete understanding of what database elements beyond basic subscriber listings are being requested.

The FCC order clearly requires that the ILEC share directory listings. The parties are in agreement on this requirement and BA agrees to provide subscriber listings. The disputes are in two areas: 1) what data will be provided as part of the database, and 2) in what format will the data be provided.

The seemingly straightforward issue of what will constitute the subscriber listing information database was discussed at some length in the testimony. MCI requests all information in the directory assistance database. BA counters that it has spent time and money developing other data that are part of the database, and that MCI should have access to only basic subscriber information.

MCI has asked for all data but has not defined what specific data it would be lacking if BA provided subscriber listings. Basically, MCI has not defined what it is looking to get. BA has defined the additional functions of its database as "goodies," but has only offered one example of what this category includes. The example was that the database contains the ability to link alternate spellings of names, which aids in the search.

Regarding the second sub-issue of the format of the data to be provided. MCI requests that the data be provided in readily accessible tape or electronic format. BA contends providing data through Electronic Request and Direct Access satisfies the requirements of the FCC order

The Act requires that an ILEC provide any requesting carrier unbundled access to network elements at any feasible point. The FCC's Interconnection Order is quite specific on the requirement to unbundle the directory assistance database and the access that must be provided. The Order concludes that ILECs must unbundle both the facilities and functionalities providing operator services and directory assistance.[37] The Order further states clearly that "incumbent LECs must provide access to databases as unbundled elements." The access includes the ability of a requesting LEC to add data to the database and the ability to read the database. The Second Report and Order states clearly includes tape and electronic access "on request" from the CLEC

37 Interconnection Order, ¶ 535.

as a requirement of providing readily accessible listing.[38] The Order also sstates that such access does not preclude an ILEC from mediating entry of a competitor's customer information into the database.[39]

The Interconnection Order more specifically requires that the access he at least equal in quality to that which the incumbent provides to itself. The only exception allowed to this requirement in the Order is where such access is technically infeasible. Thee Order makes clear that it is anticipated that instances of technical infeasibility will he few. It placess the burden of proving any such technical infeasibility on the ILEC.[40] The Order includes access too internal gateway systems and electronic interfaces as a necessary means of providing nondiscriminatory access. The ILEC must provide these to the extent they are used by the ILEC itself.[41] This requirement includes the ability to read such a database to enable CLECs to provide their own directory assistance and operator services.[42]

Regarding the issue of providing the entire database, the FCC said in its Second Report and Order that the requirement to extend nondiscriminatory access "extendss to any information services and adjuncts used to provide directory assistance."[43]

AWARD

The Arbitrator hereby provides an Order that BA should provide directory assistance

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38. Second Report and Order, ¶¶ 14, 141.

39 Interconnection Order, ¶ 538.

40 Interconnection Order, ¶¶ 312,131.

41 Interconnection Order, ¶¶ 523-525.

42 Interconnection Order, ¶ 538.

43 Second Report and Order, ¶ 14

access to MCI, but it does not have to share the entire database which BA has spent time and money to gather. (Testimony before the Board should include what "goodies" BA includes therein.) If MCI can demonstrate with specificity that this is not the case, because of either the information it receives or the way it receives the information, MCI should request re-examination of the issue by the Board.

ISSUE 18 - REPAIR REQUESTS

The issue to be decided in this arbitration is whether "611" dialing should be retained as an option for customers calling for repair services.

MCI's position is that although it has reached agreement with BA on most of this issue, that 611 should be retained as a general number, which MCI or other competing carriers could choose to maintain as an alternative number for customers to call to obtain repair service. BA's position is that it rejects the 611 number as too complicated.

Presently, local telephone customers who need repair service dial 611. The number 611 is an "N11" numbers that has been assigned a specific and consistent application. Other common N11 numbers are 911 and 411. These 611-calls are answered by a Bell Atlantic repair answer center. However, after CLECs enter the local telephone market, each may want repair requests to come directly to its own repair center. MCI and BA have agreed to a three-step process that will phase out the 611 number. BA and the CLECs will establish 800 numbers for customers to use when they are calling for repair requests. This plan should remove any competitive advantage that one LEC might have if it retained the 611 number dialing.

During the first two phases of the plan, BA will either provide a toll-free number for CLEC customers who dial 611 or will tell those customers that they must call their own local

exchange company. During the third phase, the 611 number would be phased out and customers dialing 611 will hear a recording that will inform them that 611 is no longer in use and that they must contact their local telephone service providers.

While MCI has agreed to establish it own 800 number for repair service call, it requests that the decision in this arbitration not preclude the possibility that 611 be retained as a general number that MCI or other carriers could choose to maintain as an alternative for customer repair calls.

BA points out that customers calling for repairs often use someone else's telephone and that the suggested use of line class codes is infeasible. This is because if a customer is calling from a phone other than their own, the switch would recognize the number of the telephone being used, not the one in need of repair. BA also argues that since other carriers have agreed to use their own 800 numbers as a solution, retaining 611 would be for MCI's use alone.[44]

The parties have agreed to a reasonable plan for changing the method by which customers request service. A principal aspect of this plan from the point of view of the 1996 Telecommunications Act is that it will be competitively neutral. The customers of all local exchange companies will have to call an 800 number for repair service. Retaining 611 dialing after parity is established through the use of 800 dialing is, as BA notes, problematic. First, its value will be reduced by the fact that many calls may come from other than the customer's number. Therefore, expenditures to maintain 611 dialing may not produce a substantial return. Second, maintaining 611 and 800 access does have the potential to create significant confusion. Therefore, BA should be permitted to phase out 611 dialing after it has created competitively neutral 800

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44 Albert 11/7 T. pp. 355-360.

access to the repair service of MCI.

AWARD

The Arbitrator agrees with BA's position and hereby provides an Order that eventually eliminates 611, as an alternative. However, the Board may wish to encourage BA and the CLECs to work jointly toward a solution that will distribute calls through one number, on the basis of dialing 611 or some common number, to the customer's repair center, through an automatic dialing and operator-assisted system. Such a system will benefit all customers of New Jersey by allowing one call for service, as opposed to the multiple calls that are implied by the agreed solution. Given the ubiquity of the benefits, all participating carriers would presumably contribute in a competitively neutral way to the establishment of such a system, which will simplify repair requests.

ISSUE 19 - INTERIM NUMBER PORTABILITY

The issue for arbitration is the rate that carriers should charge one another to provide interim number portability (INP).

MCI's position on this is that each carrier should cover its own costs for INP. BA's position is also very simple and the carriers should compensate one another in the amount of $3.00 per month per ported number for up to 10 paths. They would charge $.40 for each additional path.

Number portability gives end users the capability to retain their current telephone numbers when they switch local exchange carriers. The Act recognized the importance of number portability to a competitive market place; it gave every local exchange carrier "the duty to provide, to the extent technically feasible, number portability in accordance with requirements

prescribed by the Commission [FCC]."[45] Furthermore, the Act states that "the cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission [FCC]."[46]

In its First Report and Order on Telephone Number Portability, the FCC defined competitively neutral to mean that "the cost of number portability borne by each carrier does not affect significantly any carriers ability to compete with other carriers for customers in the marketplace."[47] In addition, the FCC concluded that:[48]

> *the incremental payment made by a new entrant for winning a customer that ports his number cannot put the new entrant at an appreciable cost disadvantage relative to any other carrier that could serve that customer.*

The FCC also provided four mechanisms for the allocation of INP costs among carriers. Three of those methods use a particular allocation factor and the fourth requires each carrier to pay its own costs of implementing INP."[49]

AWARD

The Arbitrator agrees with MCI's position here, except that the rates should be interim. Accordingly, he hereby issues an Order that provides that each carrier should recover its own

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45 1996 Telecommunications Act, § 251 (b)(2).

46 1996 Telecommunications Act, § 251 (e)(2).

47 FCC LNP Order, July 2, 1996, ¶ 131.

48 FCC LNP Order, July 2, 1996, ¶ 132.

49 FCC LNP Order, July 2, 1996, ¶ 136

costs for INP. (Until the time when BA files its application in accordance with TELRIC. The Board can then adjust the amounts based on that.)

The amounts that each CLEC will pay under any of the other three methods will be small. Moreover, those costs will generally be in proportion to the share of the market that each obtains. In other words, their costs for INP will be in proportion to their success in the marketplace; therefor, they will not bear costs disproportionately. Therefore, the Board should, in the event that it orders one of the other three methods of allocation, make recovery retroactive to the initiation of service under the agreement between BA and MCI.

ISSUE 20 - ACCESS TO POLES, CONDUITS, DUCTS AND RIGHTS OF WAY

The parties have resolved the issues related to information requirements and time intervals to provide facilities that were originally presented in this arbitration. The parties have not agreed on the time for access to poles, conduits, ducts and rights-of-way.

MCI's position on this issue is very simple. After a formal request, BA must hold the position open for 90 days and BA is to give an answer within 20 days of a formal request by MCI. BA's position is that 20 days is too short a time. They do agree with MCI on the 90 day provision.

The parties have agreed to the principal issues regarding access and the procedures that apply to getting access. Pricing remains an issue. As BA notes, there have been no specific time proposals. (There is no basis for determining prices in this arbitration.)

AWARD

The Arbitrator hereby issues an Order which provides that once MCI makes a formal request, BA must reserve the specific facilities for 90 days. BA should also be required to initially

answer within 20 days of a request by MCI. If BA cannot answer within 20 days, it must send a letter to MCI, indicating why.

ISSUE 21 - PROVISION OF DIRECTOR LISTINGS/WHITE AND YELLOW PAGES

The issue is resolved between the parties and there is no need for the arbitrator to make an Order.

ISSUE 22 - COMPENSATION FOR DIRECTORY LISTING/WHITE PAGES

The issue for arbitration is to decide whether and how much MCI should pay as a one-time charge for a listing for each of its customers in BA directory listings.

MCI's position is that it should get this for free, but BA suggests a one-time $5.00 per customer charge as compensation.

BA and MCI have already come to agreement in terms of including MCI customers in the directory. Since BA is the publisher of the directory, the issue remaining for resolution is how much if anything should MCI pay to BA for providing this service. The charge proposed by BA will be applied in those cases where a CLEC is interconnecting via unbundled loops. The charge would not apply in those cases where the CLEC is reselling BA services or where the CLEC is purchasing an unbundled switch port. In the former case the directory services in question are part of the service. In the later case the FCC Order states that the directory listing is part of the basic switch functionality being purchased.

There is no specific guidance provided in the Act or the FCC Order regarding pricing of directory listings in the circumstances that are at issue here.

MCI proposes that there be no charge for inclusion of MCI's customers in BA's directory. MCI's position is that there is "mutual benefit" to all carriers to having a complete directory

listing, BA does not charge its customers for inclusion in the directory, and BA will realize substantial advertising revenue from the CLECs' customers. MCI also considers it discriminatory under the Act's definition for BA to charge MCI $5.00 and not also charge itself $5.00.[50] MCI does not put forth any studies suggesting that a different cost for directory services would be more appropriate, nor do they directly challenge the $5.00 charge proposed by BA.

BA proposes a one-time charge of $5 per customer for primary white page (and yellow page) listing inclusion in the BA database, and delivery of the directory (phone book) to the customer. Additional listings, foreign listings, and other white pages services are proposed to be priced at existing tariff rates. BA argues that the rate proposed is the same as the rate that has been agreed to by MFS and ETC. BA also introduced no cost studies to support the $5 charge. The basis for the charge is that "the actual $5.00 is a number that CLECs like MFS and ETC have agreed to."[51] Little weight should be given to the charge that other CLECs have agreed to, because the particular term that addresses the issue in those agreements may have been agreed to as part of the overall give-and-take associated with the negotiations.

BA's incremental cost for providing this service should serve as the ceiling for what may be charged. However, BA did not provide any information that would permit this determination. On the other hand, MCI has not provided a basis for a different charge nor challenged BA's proposed figure. It is clear that (1) MCI receives value for having directory listings, and (2) BA has a cost associated with providing the service.

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50 Starkey 11/8 T, p. 152.

51 West 11/8T, p. 55

AWARD

The Arbitrator hereby issues an Order that BA is to get a one-time per customer charge of $3.00 per person or a rate, which is consistent with other BA agreements with other carriers. (This is only applicable when a CLEC is purchasing unbundled local loops and connecting to the CLEC's switch.)

ISSUE 23 - NON-RECURRING CHARGES

The issue for arbitration is the determination of rates to be billed by BA to MCI to recover BA's implementation costs and for non-recurring charges.

MCI's position on this is that the Arbitrator should order that a service order charge of $2.07, installation charge with a premises visit of $35.72 and, installation with a no-premises visit of $21.07. BA's position is that the charges should be $51.00 for a service order, installation of a new connect $27.00, installation for an existing customer $14.00 and a coordinated cutover charge, which is optional, of $19.00.

A non-recurring charge is imposed by an incumbent carrier to recover its costs of processing a service order and installing any equipment necessary to make the service available. The FCC's rules provide direction regarding the nature of the costs that non-recurring charges should recover:[52]

> *nonrecurring charges...shall not permit an incumbent LEC to recover more than the total forward-looking economic cost of providing the applicable element.*

Neither party submitted detailed explanations of, or support for, the charges that they proposed. The initial service order consists of work activities such as service order entry, other ordering

52 47 C.F.R. § 51.507 (e).

activities, billing inquiries, credit verification, local service provider verification, and system processing. Installation charges cover the work activities of facility assignment and update, and in some cases installation or central office technical personnel.

AWARD

I as Arbitrator, agree with the position taken by BA in this instance but provide such an Order on an interim basis only. See Exhibit BA 39. (The Board can then review the rates and make them retroactive, if BA files its TELRIC costs.)

ISSUES 24 - 28 - TECHNICAL STANDARDS, LEVELS OF PERFORMANCE AND OPERATIONAL PROCESSES

The parties consolidated into one issue the issues that had been identified previously as separate issues numbers 24 through 28. The issue allegedly remaining for arbitration is whether BA should be required to adopt the standards set forth by MCI for inter-company operational interfaces, technical interfaces between unbundled elements and interconnection networks, and performance standards for operations support systems and products.

MCI wants BA to accept "uniform national technical interfaces" or "standards". BA takes the position that it cannot comply with something that may occur in the future.

Both the Act and the FCC's Order address the issue of quality of service provided by ILECs to the CLECs. The Act requires that ILECs provide interconnection:

> *that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection.*

The FCC Order concluded that incumbent LECs must provide interconnection at a level of quality

that is, at a minimum, indistinguishable from that which it provides itself. This quality standard even precludes differences that are not perceived by the end user. Incumbents must also provide interconnection that meets lesser or higher standards, if it is technically feasible and if they are requested to do so. The new entrant must compensate the incumbent for the economic cost of any higher quality interconnection.[53]

The Interconnection Order notes that the states must adhere to the nondiscrimination rules of the FCC, and establish specific rules of their own regarding access to unbundled network elements. The states are encouraged to adopt reporting requirements for incumbent LECs to ensure that they do not discriminate. Incumbent LECs must provide unbundled elements, as well as access to them, that are at least equal in quality to that which the incumbent provides itself, unless it can prove to the state commission that it is technically infeasible to do so. When requested, the incumbent LEC must provide lesser or higher quality access and unbundled elements whenever technically feasible to do so, and it will be compensated by the new entrant for the full cost of providing higher quality.[54]

The FCC Order also concluded that services made available for resale must be at least equal in quality to that provided by the incumbent to itself. This standard also precludes differences that may be imperceptible to the end user. Similar requirements pertain to timeliness of provisioning.[55]

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53 Interconnection Order, ¶¶ 224-225.

54 Interconnection Order, ¶¶ 307 through 316.

55 Interconnection Order, ¶ 970.

AWARD

The parties agree that there should be parity of service, as measured by what BA provides to itself. The agreement between BA and MCI should confirm BA's obligation and its agreement to provide to MCI service that is at parity with service that it provides to itself. Otherwise, MCI's request for adoption of specific standards dealing with uniform nationall technical interfaces between interconnected networks and unbundled elements is denied.

The arbitrator has not attempted to resolve the unresolved contract language issues between the parties.

ISSUES 29 and 30 - RESOLUTION OF FUTURE - DISPUTES AND REMEDIES FOR FUTURE

At issue allegedly for arbitration is whether a procedure should be established that would include methods of resolving future disputes and specific remedies for breach of agreement.

MCI has a simple position on these issues: The Arbitrator should provide a procedure for resolution of disputes and where BA does not live up to its agreement. BA says this is inconsistent with the Act.

Neither the Act nor the FCC's Order provide specific guidance om the issue of future dispute resolution and remedies for breach. MCI has not presented a convincing case that this arbitration should establish special procedures for resolution of future disputes or remedies for breach that are necessary beyond the mechanisms already in place with the Board and the courts.

AWARD

The MCI request is denied. The Arbitrator ought not to get involved in such a procedure. If MCI has any problem, it should go to the Board.